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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/500,021	06/25/2004	Jixiong Dong	9896-000023/US/NP	2768
27572 7590 06/28/2010 HARNESS, DICKEY & PIERCE, P.L.C. P.O. BOX 828 BLOOMFIELD HILLS, MI 48303				
EXAMINER				
CHRISS, ANDREW W				
ART UNIT		PAPER NUMBER		
2472				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/500,021

Applicant(s)

DONG, JIXIONG

Examiner

Andrew Chriss

Art Unit

2472

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 June 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because:
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1,3,5,7-9 and 12-15.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/William Trost/
Supervisory Patent Examiner, Art Unit 2472

/A. C./
Examiner, Art Unit 2472

Continuation of 3. NOTE: The following newly added claim limitations raise new issues that would require further consideration and/or search: "dividing resources of each optical port by each of the nodes in the fiber path into multiple minimum protection units" and "defining a plurality of logic-systems in the network, each of the logic systems including a physical media and carry services, the physical media including nodes and fiber connecting those nodes" in Claims 12 and 14.

Continuation of 11, does NOT place the application in condition for allowance because: Applicant's arguments filed June 17, 2010 regarding rejection of Claims 1 and 8 under 35 U.S.C. 102(b) have been fully considered but they are not persuasive. Applicant states that Taniguchi fails to anticipate the features of "mapping more than one of the minimum protection units by each of the node into different ones of the plurality of logic-systems", wherein "a first logic-system of the plurality of logic-systems respectively adopts a first protection mode of multiplex section protection, path protection or sub-network connection protection; a second logic-system of the plurality of logic-systems adopts a second protection mode of multiplex section protection, path protection or sub-network connection protection." Applicant further states "Taniguchi at best shows that all the virtual containers of a node operate in a single protection mode initially and then all switch to a different protection mode." Examiner respectfully disagrees. There is no requirement in the claim language that the logic systems operate in parallel or simultaneously. The claim language defines the features of a first logic-system and a second logic-system, but does not define the concurrency with which the logic-systems operate. As such, the disclosure of Taniguchi of multiple logic systems (i.e., sending a virtual container via nodes in the ring at column 4, line 57 - column 5, line 21 and Figure 32) and associated multiple protection modes (see Figure 32 and column 4, line 25 - column 5, line 25) reads upon the disputed claim limitations. Applicant further states that "claim 1 requires that the network be divided into a plurality of logic-systems and that each logic-system can perform an automatic protection switch independently and individually without affecting the services transmitted via other logic-systems." Examiner notes that while claim 1 does recite "defining a plurality of logic-systems in the network," there is no requirement in the claim language for that "each logic-system can perform an automatic protection switch independently and individually without affecting the services transmitted via other logic-systems." Rather, claim 1 recites "wherein protection for the services carried by a given logic-system which adopts a path protection is needed, performing a path protection be each of the nodes belong to that given logic system" and "wherein protection for the services carried by a given logic-system which adopts a sub-network protection is needed, performing a path protection be each of the nodes belong to that given logic system." Examiner submits that each claim limitation is phrased as a condition in and of itself, and neither action is necessarily tied to the other. Therefore, there is no requirement in the claim language that one protection mode be switched while not affecting another protection mode.

Applicant's arguments filed June 17, 2010 regarding rejection of Claims 12 and 14 under 35 U.S.C. 103(a) have been fully considered but they are not persuasive. Regarding Claim 12, Applicant states that the combination of Taniguchi and Barker fails to disclose "instructing a node assigned to both the first logic-system and the second logic-system to selectively switch each of the virtual containers mapped to the first or second logic-system and received by the node in accordance with the protection mode of the logic-system to which that received virtual container is mapped, and further including switching, at the node, the virtual containers respectively mapped to the first and second logic-systems in accordance with respective different ones of normal working mode, passing working mode, bridging working mode, and switching working mode." Examiner notes that the cited claim limitations are not required in Claim 12 and instead are recited in Claim 14. Per MPEP 2143.01: "The test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art, and all teachings in the prior art must be considered to the extent that they are in analogous arts. Where the teachings of two or more prior art references conflict, the examiner must weigh the power of each reference to suggest solutions to one of ordinary skill in the art, considering the degree to which one reference might accurately discredit another. In re Young, 927 F.2d 588, 18 USPQ2d 1089 (Fed. Cir. 1991)." Taniguchi and Barker are both directed to processing of virtual containers over self-healing ring networks and are therefore in analogous arts. Further, Examiner submits that the combination of the logic-system mapping and protection switching (i.e., definition of protection modes and APS bytes) disclosed in Taniguchi, as described above, and the SDH/SONET switching architecture (paragraph 0100-0101) disclosed in Barker would have suggested the above-cited claim limitations to one of ordinary skill in the art. Examiner further submits that the claim limitation "selective switching" is tied to the claimed protection modes, and is suggested by the combination of the automatic protection switching disclosed in Taniguchi (column 4, line 25 - column 5, line 25) and the SDH/SONET switching architecture disclosed in Barker. Rejection of Claims 12 and 14 under 35 U.S.C. 103(a) is therefore maintained.